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In re Application of

Anker et al

Serial No.:09/807,558

Filed: July 17, 2001

Attorney Docket No.: ICI 102

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: PETITION DECISION  
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This is in response to the petition under 37 CFR § 1.181, filed October 30, 2006, requesting review of the examiner's finding that applicants' amendment to the specification to delete Examples 6 through 9 constitutes new matter by omission. The delay in responding to this petition is regretted.

## BACKGROUND

This case has a long prosecution history. Applicants have made repeated attempts to amend the specification by deleting Examples 6-9 in the specification. Most recently, applicants submitted a Request for Continued Examination on April 14, 2006 together with an amendment and response amending the specification as previously proposed and amending the claims.

On June 29, 2006, the examiner mailed an Office action entering the amendment filed on April 14, 2006. In this Office action, however, the examiner continued to object to the specification under 35 U.S.C. § 132 on the basis that the deletion of Examples 6 – 9 constitutes new matter by omission.

Applicants responded thereto by filing this petition under 37 CFR § 1.181, on October 30, 2006, requesting review of the new matter objection.

## DISCUSSION

Applicants argue that the examiner objected to the deletion of Examples 6 to 9 as new matter because the "specification is not the same scope [as originally filed]" in the Office action of June 29, 2006. Applicants point out the examiner reasoned that the omission substantially changed

the specification from the originally filed specification, and therefore is new matter by omission. Applicants also point out that the examiner has not rejected a single claim based on a lack of written description in the specification due to the deletion of Examples 6 to 9 as one would expect if there were new matter by omission. Applicants further point out that the deletion of Examples 6-9 does not broaden the disclosure, and that the examiner does not explain how the deletion could broaden the specification.

Applicants' points are well taken and agreed with. Therefore, the objection to the specification should be withdrawn.

## **DECISION**

The petition is **GRANTED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision.

Should there be any questions about this decision please contact Ms. Marianne Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number 571-273-8300.

A handwritten signature in cursive script, reading "George C. Elliott".

George Elliott  
Director, Technology Center 1600